Ibrahim bin Mohd v Public Prosecutor

A

COURT OF APPEAL (PUTRAJAYA) — CRIMINAL APPEAL NO Q-05–85 OF 2005

B

LOW HOP BING, CLEMENT SKINNER AND LINTON ALBERT JJCA

9 MARCH 2012

C

Criminal Law — Murder — Defence — Defence of unsoundness of mind — Accused admitting to stabbing deceased while carrying out 'God's mission' — Whether unsoundness of mind proven — Penal Code s 84

D

The High Court had rejected the defence of unsoundness of mind and found the appellant ('the accused') guilty of committing murder under s 302 of the Penal Code ('Code') by causing the death of one Ikhsan bin Mustapha ('the deceased'). In his defence, the accused had given evidence on oath, by reading out a handwritten statement which was admitted as exh D1. In exh D1, the accused admitted killing the deceased, by carrying out 'God's mission', based on the dreams that he had and other phenomena as guidance from God. The accused raised the defence of unsoundness of mind pursuant to s 84 of the Code ('s 84'). The accused had been referred to a government psychiatrist for observation and was found to be normal and conscious of his act at the time of committing the crime. The learned trial judge found that the accused was well aware of what he was doing when he plunged the knife into the deceased's chest. The issue arising on appeal was whether the accused had succeeded in establishing unsoundness of mind under s 84.

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Held, dismissing the appeal and affirming the conviction and sentence:

(1) Section 84 provides a complete defence if the accused had committed the offence under the circumstances stated therein. The burden of proving this defence is on the accused who may do so on a balance of probabilities. Until this is established, the court shall presume the absence of soundness of mind (see para 13).

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(2) The issue of unsoundness of mind was raised only in submission. Except for exh D1, no other evidence was adduced for the accused either through cross-examination of prosecution witnesses or the examination-in-chief of the accused himself. That being the case, such defence need not be considered (see para 16); *Public Prosecutor v Misbah bin Saat* [1997] 3 MLJ 495 referred.

I

[Bahasa Malaysia summary

Mahkamah Tinggi telah menolak pembelaan ketaksempurnaan akal dan mendapati perayu ('tertuduh') bersalah melakukan pembunuhan di bawah s 302 Kanun Keseksaan ('Kanun') dengan menyebabkan kematian seorang yang bernama Ikhsan bin Mustapha ('si mati'). Dalam pembelaannya, tertuduh telah memberikan keterangan bersumpah, dengan membaca penyataan bertulis yang dimasukkan sebagai eksh D1. Dalam eksh D1, tertuduh mengaku membunuh si mati, dengan melaksanakan 'God's mission', berdasarkan mimpi-mimpi yang dialaminya dan fenomena lain sebagai panduan daripada Tuhan. Tertuduh membangkitkan pembelaan ketaksempurnaan akal berikutan s 84 Kanun ('s 84'). Tertuduh telah dirujukkan kepada pakar psikiatri kerajaan untuk pemerhatian dan didapati dalam keadaan normal dan sedar mengenai tindakannya pada masa melakukan jenayah tersebut. Hakim perbicaraan yang bijaksana mendapati bahawa tertuduh menyedari mengenai apa yang dibuatnya apabila dia menusuk pisau tersebut ke dada si mati. Isu berbangkit atas rayuan adalah sama ada tertuduh telah berjaya dalam membuktikan ketaksempurnaan akal di bawah s 84.

Diputuskan, menolak rayuan dan mengesahkan sabitan dan hukuman:

(1) Seksyen 84 memperuntukkan pembelaan lengkap jika tertuduh telah melakukan kesalahan tersebut di bawah keadaan-keadaan yang dinyatakan di dalamnya. Beban membuktikan pembelaan ini adalah ke atas teruduh yang mungkin berbuat demikian atas imbangan kebarangkalian. Sehingga ini dibuktikan, mahkamah akan menganggap ketaksempurnaan akal (lihat perenggan 13).

(2) Isu ketaksempurnaan akal dibangkitkan hanya di dalam penghujahan. Kecuali untuk eksh D1, tiada keterangan lain dikemukakan untuk tertuduh sama ada melalui pemeriksaan balas saksi-saksi pendakwaan atau pemeriksaan utama tertuduh sendiri. Oleh itu, pembelaan sedemikian tidak perlu dipertimbangkan (lihat perenggan 16); *Public Prosecutor v Misbah bin Saat* [1997] 3 MLJ 495 dirujuk.]

Notes

For cases on defence, see 4(1) *Mallal's Digest* (4th Ed, 2012 Reissue) paras 1480—1508.

Cases referred to

PP v Misbah bin Saat [1997] 3 MLJ 495, HC (refd)

Legislation referred to

Penal Code ss 84, 302

Appeal from: Criminal Trial No 45–03 of 2003 (High Court, Miri)

Yap Yau Sin (Ranbir S Sangha & Co) for the appellant.

Yaacub Hj Chik (Deputy Public Prosecutor, Attorney General's Chambers) for the respondent.

Low Hop Bing JCA (delivering judgment of the court):

APPEAL

[1] The Miri High Court had rejected the defence of unsoundness of mind and found the appellant ('the accused') guilty of committing murder under s 302 of the Penal Code by causing the death of one Ikhsan bin Mustapha at Masjid al Taqwa Merpati in Miri and imposed the mandatory death sentence. We had dismissed the accused's appeal. Our grounds are set out below.

FACTUAL BACKGROUND

[2] Upon maximum evaluation of the evidence adduced for the prosecution, the learned trial judge found that the prosecution has established a prima facie case against the accused.

[3] In his defence, the accused elected to give evidence on oath, by reading out a 14–page handwritten statement which was admitted as exh D1.

[4] In exh D1, the accused admitted killing the deceased, by carrying out 'God's mission', based on the dreams that he had and other phenomena as guidance from God. He came face to face (the word used by the accused was 'terserempak') with a conspiracy within the mosque involving several 'imams' or religious leaders.

[5] The 'God's mission' is the accused's perceived sacred duty to defend and preserve the correct teachings of Islam; and the 'conspiracy' was perceived by the accused to have been committed by the 'imams' to deride the religion of Islam.

[6] The accused perceived his role as a faithful defender of Islam.

[7] The accused thought and was convinced that the deceased could assist him in his 'mission' but was frustrated and disappointed with the deceased's failure. The accused then perceived the deceased as a person who attempted to obstruct the accused's 'mission' by spreading allegations, accusations and slander against the accused through his ('the deceased's') sermons during prayers at the mosque. The accused's urge to remove his perceived obstruction to his 'mission' has seemingly prompted the accused to kill the deceased.

[8] Exhibit D1 further revealed:

(a) the accused's state of mind;

(b) the circumstances under which the accused had acted; and

(c) the reason why the accused did it.

[9] The accused had taken upon himself as the saviour of the world and human soul by championing the correct teaching of Islam as perceived by him. And to that end, the accused would stop at nothing to ensure that his self-assumed 'mission' is not derailed by anybody.

DEFENCE OF UNSOUNDNESS OF MIND

[10] Learned counsel Mr Yap Yau Sin raised the defence of unsoundness of mind pursuant to s 84 of the Penal Code ('s 84').

[11] In response, learned deputy public prosecutor En Yaacub Hj Chik argued that the accused had been evaluated by a government psychiatrist and was found to be normal and conscious of his act at the time of committing the crime.

[12] The vital question for our decision is whether the accused had succeeded in establishing his unsoundness of mind under s 84 which reads:

> Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.

[13] Section 84 provides a complete defence if the accused had committed the offence under the circumstances stated therein. The burden of proving this defence is on the accused who may do so on a balance of probabilities. Until this is established, the court shall presume the absence of soundness of mind. This is consistent with the common law presumption of sanity.

[14] Upon a proper perusal of exh D1, the learned trial judge found that the accused was well aware of what he was doing when he plunged the knife, exh P19, into the deceased's chest.

[15] The accused had been referred to a government psychiatrist for observation and was certified fit to stand trial. The accused's learned counsel had not applied to the court to refer the accused to another psychiatrist for an independent evaluation of the accused's mental state generally or at the time of committing the offence specifically.

[16] The issue of unsoundness of mind was raised only in submission. Except for exh D1, no other evidence was adduced for the accused either through cross-examination of prosecution witnesses or the examination-in-chief of the accused himself. That being the case, such defence need not be considered: see *Public Prosecutor v Misbah bin Saat* [1997] 3 MLJ 495 (HC).

CONCLUSION

[17] With regret, we could not sustain the submission presented for the accused. Our answer to the above question is in the negative. The learned trial judge has correctly found the accused guilty as charged and convicted him. We therefore dismissed this appeal, affirmed the conviction and mandatory sentence imposed by the court below.

Appeal dismissed and conviction and sentence affirmed.

Reported by Kanesh Sundrum